

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

RALPH RAYMOND BROWN,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 06-804
	)	
KIA MOTORS CORPORATION and KIA	)	Judge Terrence F. McVerry
MOTORS AMERICA, INC.,	)	Magistrate Judge Cathy Bissoon
	)	
Defendants.	)	

**MEMORANDUM ORDER**

On August 1, 2008, this case was referred to United States Magistrate Judge Cathy Bissoon for pretrial proceedings in accordance with the Magistrates Act, 28 U.S.C. §§ 636(b)(1)(A) and (B), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

On February 27, 2009, the magistrate judge issued a Report (Doc. 135) recommending that Defendant's Motion for Summary Judgment (Doc. 118) be granted in part and denied in part, as described in the Report. Service of the Report and Recommendation was made on the parties, and Defendants filed Objections on March 16, 2009. See Doc. 136 ("Def's Objections").

In addition to their Objections to the Magistrate Judge's Report, Defendants request an opportunity to be heard on their Objections before this Court.<sup>1</sup> (Defs' Objections at 3, 12 and

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<sup>1</sup> Defendants object to the Magistrate Judge's Report on the ground that they did not have an "opportunity to be heard." (Defs' Objections at 2-3.) Defendants' objection is overruled. The Third Circuit has held that a "court has an independent obligation to reach a decision upon a record that ha[s] been adequately developed to allow for a meaningful evidentiary determination." Oddi v. Ford Motor Co., 234 F.3d 136, 153 (3d Cir. 2000) (citing Padillas v. Stork-Gamco, Inc., 186 F.3d 412 (3d Cir. 1999) and distinguishing Padillas and Elcock v. Kmart Corp., 233 F.3d 734 (3d Cir. 2000)). In Oddi, the Third Circuit affirmed the district court's decision to not hold a hearing and in doing so, observed that the district court had an ample evidentiary record before it, which included

Caption to Defs' Objections.) Defendants' request for a hearing is denied and their objections to the Report are **OVERRULED**.

After a *de novo* review of the pleadings and documents in the case, together with the Report and Recommendation, Defendants' Objections thereto, and Plaintiff's Response, the following Order is entered:

**AND NOW**, on this 30th day of March, 2009, **IT IS HEREBY ORDERED** that Defendant's Motion for Summary Judgment (Doc. 118) is **GRANTED IN PART AND DENIED IN PART**, as follows:

- (I) Defendants' Motion to Exclude the Expert Testimony of Dr. Stephen Batzer, Dr. Russell F. Dunn and Dr. David Renfroe (Doc. 118) is **DENIED**;
- (ii) Defendants' Motion for Summary Judgment as to Count II of Plaintiff's Complaint for negligence and recklessness (Doc. 118) is **DENIED**;
- (iii) Defendants' Motion for Summary Judgment as to Count III of Plaintiff's Complaint for breach of implied warranty (Doc. 118) is **DENIED**;
- (iv) Defendants' Motion for Summary Judgment as to Plaintiff's request for punitive damages (Doc. 118) is **DENIED**; and
- (v) Defendants' Motion for Summary Judgment as to Count I of Plaintiff's Complaint for strict liability (Doc. 118) is **GRANTED** and Count I is dismissed with prejudice.

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the expert's preliminary and amended reports, an affidavit submitted by the expert in connection with the Daubert challenge, and the expert's deposition testimony. Id. at 153-55. The Court stated that the "district court therefore apparently saw no need to conduct a hearing before ruling on the Daubert challenges." Id. at 153. Here, the record before the Court is extensive and consists of ample evidence (including the experts' reports and deposition testimony) to allow for a "meaningful evidentiary determination" on the admissibility of the Plaintiffs' expert testimony without a hearing.

The Report and Recommendation of Magistrate Judge Bissoon dated February 27, 2009  
is hereby adopted as the opinion of the District Court.

s/Terrence M. McVerry  
United States District Judge

cc (via email):

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